



CALIFORNIA JUDGES ASSOCIATION

The Voice of the Judiciary

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Via Federal Express

September 24, 2012

Commission on Judicial Performance
455 Golden Gate Avenue, Suite 14400
San Francisco, California 94102

RE: Proposed Rule Amendments and Additions

Commission Members:

Established in 1929, the California Judges Association (CJA) is a voluntary, dues supported organization, representing over 75% of the state's active judicial officers. CJA also has a large membership of retired justices, judges, commissioners and referees. We are the biggest private association of bench officers in the United States. CJA is proud to be the voice of California's judiciary.

The public justifiably holds the state's bench in high regard. However, on the rare occasion when discipline is necessary, CJA appreciates the Commission on Judicial Performance's (CJP) important role. CJA supports CJP's efforts to protect the public, while ensuring fairness to all participants in the judicial complaint process.

Currently, CJP is conducting its biannual rules review. CJA offers the attached rule amendments and additions. These proposals will safeguard CJP's mission while at the same time making the process more transparent and fair to everyone involved.

If you have questions or want further explanations of CJA's proposals, please inform me and I can appear at CJP's next meeting.

Thank you for your attention to this matter.

DAVID M. RUBIN,
President

DMR:gk

Attachment

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COMMISSION ON
JUDICIAL PERFORMANCE

Attachment 1: The California Judges Association proposals for rule amendments and additions. New language is in *italics*. Suggested deletions have a line through the text.

111.4. Grounds for Issuance of Advisory Letter (new)

(Grounds for Issuance of Advisory Letter.) The Commission may issue an advisory letter for a knowing violation of the California Code of Judicial Ethics, if supported by clear and convincing evidence. The Commission shall not issue an advisory letter to a judge arising from or based upon legal error unless there is clear and convincing extrinsic evidence that the judge committed that act as a result of bad faith, bias, abuse of authority, disregard for fundamental rights, intentional disregard of the law, or any other purpose other than the faithful discharge of judicial duty. The fact that a judge's decision has been overturned on writ or appeal, including on grounds that there was a prejudicial abuse of discretion, shall not be a sufficient basis for the issuance of an advisory letter without additional evidence that the judge acted for an improper purpose.

Rule 111.5. Correction of Advisory Letter. (amended)

(Correction or amendment to Advisory Letters.) A judge who receives an advisory letter under either rule 110(c) or rule 111(c) may, within 30 days of the mailing thereof, apply to the commission for correction or modification of an error of fact, an error of law, and/ or any misstatement contained in the advisory letter. The application shall be determined by the commission without an appearance by the judge before the commission unless the commission determines otherwise. Factual representations or information, including documents, letters, or witness statements, will be considered only if the factual information is relevant to the question of whether the advisory letter contains an error of fact an error of law, and/ or any misstatement contained in the advisory letter.

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112. Disclosure of Information (new):

(Disclosure of information.) No response by a judicial officer, or her or his counsel, to a staff inquiry letter or preliminary investigation letter shall be required until after the Commission states in its proposed staff inquiry letter or preliminary investigation letter with specificity, in addition to the information required by Rules 110 and 111, the sources on which it is relying when issuing its staff inquiry letter, or preliminary investigation letter, including but not limited to: All nonpublic records of court proceedings, including confidential sealed records and transcripts (described by date and proceeding), non-confidential records and transcripts (described by date and proceeding), witness interviews and any other information relied upon in arriving at the determination that a staff inquiry letter or preliminary investigation letter should be issued. Absent extraordinary circumstances, witnesses shall be identified by name and interview date. The judge and / or her or his counsel shall be provided a copy of all materials relied upon in issuing a staff inquiry letter or preliminary investigation letter that are in the actual or constructive possession of the Commission prior to the judicial officer or counsel being required to file a response. A reasonable time for a judge to respond to a staff inquiry letter or preliminary investigation letter shall be no earlier than 20 days from the date the judge and/or her or his counsel received the materials described in this section, unless the time is extended pursuant to Rule 108. If additional information is provided to the commission after the disclosures in the initial staff inquiry letter or preliminary investigation letter, a copy of that information shall be provided to the judicial officer or his/her counsel and the response to the commission shall not be required at any time prior to 20 days following the supplemental disclosure by the commission.

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114(b) - Private Admonishment Procedure. (amended)

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(b) (Appearance before the commission)

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When newly presented factual information meets the criteria for consideration under this rule, the commission may investigate the new information. *However, information learned from investigation of the newly presented factual information shall not be considered in determining the disposition in the matter currently before the commission.* Thereafter, ~~the commission may either proceed with its disposition pursuant to the appearance process as provided in this section. the commission may based on the newly presented factual information proceed with a new or withdraw the intended admonishment and proceed with the staff inquiry or preliminary investigation. If the commission withdraws the intended admonishment and proceeds with the preliminary investigation, all~~ All rights previously waived by the judge shall be *reinstated in force for the judge in the new case.* ~~At the conclusion of the preliminary investigation, the commission may close the matter, issue an advisory letter, issue a notice of intended private or public admonishment or institute formal proceedings.~~